

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JESSE SWANSBROUGH,

Plaintiff,

v.

Case No. 1:14-CV-1246

MICHAEL MARTIN, et al.,

HON. GORDON J. QUIST

Defendants.

/

ORDER ADOPTING REPORT AND RECOMMENDATIONS

On November 19, 2015, Magistrate Judge Ellen Carmody issued a Report and Recommendation (dkt. # 27 (the PI R & R)) recommending that the Court deny Plaintiff's Motion for Preliminary Injunction and a Report and Recommendation (dkt. # 26 (the Merits R & R)) recommending that the Court deny both Defendant Tompkins's¹ motion for summary judgment and Plaintiff's motion for summary judgment. The magistrate judge recommended that the Court deny Defendant Tompkins's motion for summary judgment because he failed to carry his burden of demonstrating that Plaintiff failed to properly exhaust his administrative remedies. (*Id.* at Page ID#104.) The magistrate judge recommended that the Court deny Plaintiff's motion for summary judgment because Plaintiff failed to support his motion with evidence. (*Id.* at Page ID#105.)

Plaintiff has not filed an objection the PI R & R. Having reviewed that Report and Recommendation, the Court will adopt it.

¹ It appears that Defendant Thompkins's correct last name is Tompkins. (Dkt. # 9.) Accordingly, the Court will order the Clerk to amend the docket report to reflect Defendant Tompkins's correct name.

Plaintiff has filed a document titled “Affidavit 59(c) in Opposition to Report and Recommendation,” which the Court construes as an objection to the Merits R & R. Defendant has not filed an objection to the Merits R & R.

Pursuant to 28 U.S.C. § 636(b)(1), upon receiving objections to a report and recommendation, the district judge “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” After conducting a *de novo* review of the Merits R & R, Plaintiff’s objection, and the pertinent portions of the record, the Court concludes that the Merits R & R should be adopted.

The magistrate judge recommended denying Plaintiff’s motion for summary judgment because Plaintiff failed to submit any evidence in support of his motion for summary judgment. (Dkt. # 26 at Page ID#105.) Plaintiff fails to cite any good reason for rejecting the magistrate judge’s recommendation. In his objection, Plaintiff states that he “cannot adequately respond to the Report and Recommendation due to the limited inability [sic] to conduct any form of discovery” pertaining to the Michigan Department of Corrections criteria and policy for approval of a religious diet program and the Michigan Department of Corrections criteria and policy for “bettering” chances for approval of a religious diet upon resubmission. (Dkt. # 28 at Page ID#111.) Plaintiff still has failed to present evidence to support his motion. If Plaintiff seeks evidence to support a motion for summary judgment, he may obtain it through discovery conducted in accordance with the Federal Rules of Civil Procedure.

Therefore,

IT IS HEREBY ORDERED that the Magistrate Judge’s Reports and Recommendations issued November 19, 2015 (dkt. ## 26, 27) are **ADOPTED** as the Opinions of this Court.

IT IS FURTHER ORDERED that Plaintiff’s Objections (dkt. # 28) are **OVERRULED**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment, Plaintiff's Motion for Preliminary Injunction, and Defendant Tompkins's Motion for Summary Judgment Based on Plaintiff's Failure to Exhaust Administrative Remedies (dkt. ## 20, 22 and 14) are **DENIED**.

IT IS FURTHER ORDERED that the Clerk shall amend the docket in this case to change Defendant Thompkins's last name to Tompkins.

Dated: December 10, 2015

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE